IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1853 OF 2005

Union of India, through
1. The General Manager,
Central Railways, CST
Mumbai 400 001.
2. The General Manager,
Easter Railway, Kolkata : Appellants.

versus

Balaji Trading Co. & ors. : Respondents.

Mr.A.N.Samant for the appellants.
Ganesh Vaidya for the Respondent Nos.1 and 2.
None for Respondent No.3.

CORAM : D.G.DESHPANDE,J.

DATED : 18th October 2005.

ORAL ORDER

1. Heard the learned counsel Mr.Samant for the Union of India. Advocate for Respondent Nos.1 and 2 is present. Even though the

Respondent No.3 is served, nobody is present for Respondent No.3. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondents.

2. Mr.Samant, the learned counsel for the appellants, has raised only two contentions. Firstly, according to him, the claim was filed by the original claimant against two railways i.e. General Managers of Central and Eastern Railways, and the tribunal passed an award against both the railways. Therefore, according to Mr.Samant there can be liability only of one railway and not of both the railways.

3. Secondly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis. The goods involved in this case is Onion. There was shortage of delivery. This aspect of the matter has been considered by me in number of appeals filed by the railways particularly First Appeal No. 1136 of 1992 and this contention and claim regarding Said to contain was rejected. The facts in this case are identical where also there was shortage of delivery or damage due to short delivery.

4. If at all there is liability of the Union of India, then decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention. Therefore, the impugned judgment will have to be maintained against General Manager, Central Railway only and order against other railways has to be set aside. In the result, I pass the following order.

:ORDER:

The Appeal is partly allowed.

The liability of payment will be of the General Manager, Central Railway only. Decree against the General Manager, Eastern Railway is set aside. Rest of the impugned judgment remains as it is.

So far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]